

Tennessee Valley Authority

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in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer within 10 days after receiving notice under paragraph (b)(4)(ii) of this section from an employee or otherwise receiving actual notice of such conviction;

(6) Within 30 days after receiving notice under subsection (b)(4) of this section of a conviction, impose the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace:

(i) Take appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(7) Make a good-faith effort to maintain a drug-free workplace through implementation of subsections (b)(1) through (b)(6) of this provision.

(c) *Individuals.* By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

(d) *Enforcement.* Failure of the offeror to provide the certification required by section (b) or (c) of this provision, renders the offeror unqualified and ineligible for award. Failure of Contractor to comply with the requirements of subsections (b)(1) through (b)(7) or section (c) shall constitute a material breach of contract entitling TVA to suspend payments, terminate the contract, suspend or debar Contractor from Government contracting in accordance with subsection 5152(b)(2) of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701(b)(2)), or take such other action as may be in accordance with law or the contract.

(e) In addition to other remedies available to the Government, the certification in sections (b) and (c) of this provision concerns a matter within the jurisdiction of an agency of the United States, and making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. 1001.

(END OF CLAUSE)

§ 1316.8 Employee protected activities.

When so indicated in TVA contract documents or actions, the following clause is included by reference in such documents or actions:

Employee Protected Activities

(Applicable to contracts for goods or services delivered to nuclear facilities or otherwise relating to Nuclear Regulatory Commission (NRC) licensed activities.)

(a) Contractor shall comply with Section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851), as amended, which prohibits discrimination against employees for engaging in certain protected activities. The Secretary of Labor has determined that "discrimination" means discharge or any other adverse actions that relate to compensation, terms, conditions, and privileges of employment; the term "protected activities" includes, among other things, employees raising nuclear safety or quality controls complaints either internally to their employer or to the NRC. Contractor shall aggressively pursue any employee allegation of discrimination and shall fully investigate such allegations. Contractor shall notify the TVA Concerns Resolution Staff Site Representative of such allegation or complaint in writing, together with a copy of any complaint. Contractor shall provide TVA any investigative reports that it may prepare and shall also provide to TVA a full written description of any management action taken in response to any such allegation or complaint. In circumstances where any such allegation or complaint also charges TVA employees with involvement in any discriminatory activities, contractor shall cooperate fully with TVA counsel in its representation.

(b) Contractor shall ensure that no agreement affecting compensation, terms, conditions, and privileges of employment, including, but not limited to, any agreement to settle a complaint filed by an employee or former employee of the Contractor with the Department of Labor pursuant to Section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee or former employee from participating in any protected activity as described in the "Employee Protection" regulations of NRC, 10 CFR 50.7, including, but not limited to, providing information to NRC on potential violations of the NRC's regulations or other matters within NRC's regulatory responsibilities.

(c) Any breach of this provision shall be a material breach of the contract. In the event NRC imposes a civil penalty against TVA as a result of a breach of this provision, such a civil penalty is considered by the parties to be direct and not special or consequential damages.

(d) Contractor agrees to place this provision, along with the flow-down requirement of this sentence, in all subcontracts of any tier entered into pursuant to this contract.

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(END OF CLAUSE)

§ 1316.9 Nuclear energy hazards and nuclear incidents.

When so indicated in TVA contract documents or actions, the following clause is included by reference in such documents or actions:

Nuclear Energy Hazards and Nuclear Incidents

(Applicable only to contracts for goods or services delivered to nuclear plants.)

(a) Prior to, or at the time of shipment of the first nuclear fuel to the TVA nuclear facility, TVA will furnish nuclear liability protection in accordance with Section 170 of the Atomic Energy Act (42 U.S.C. 2210) and applicable regulations of the Nuclear Regulatory Commission. Should this system of protection be repealed or changed, TVA would undertake to maintain in effect during the period of operation of the plant, to the extent available on reasonable terms, liability protection which would not result in a material impairment of the protection afforded to Contractor and its suppliers under existing system.

(b) TVA waives any claim it might have against Contractor or its subcontractors because of damage to, loss of, or loss of use of any property at the site of the TVA nuclear facility resulting from nuclear energy hazards or nuclear incidents. This provision shall not affect Contractor's obligation under the "Warranty" provision of this contract.

(c) TVA will indemnify Contractor and its subcontractors and save them harmless from any claims, losses, or liability arising as a result of damage to, loss of, or loss of use of any property at the site of the TVA nuclear facility resulting from nuclear energy hazards or nuclear incidents. In return for this indemnification, Contractor waives any claim it might have against any third party because of damage to, loss of, or loss of use of its property at the site of the TVA nuclear

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facility resulting from nuclear energy hazards or nuclear incidents.

(d) The foregoing waiver and indemnification provisions will apply to the full extent permitted by law and regardless of fault. The subcontractors referred to above include any of Contractor's suppliers of material, equipment, or services for the work, regardless of tier.

(e) For purposes of these provisions, the following definitions shall apply: Nuclear energy hazards shall mean the hazardous properties of nuclear material. Hazardous properties shall include radioactive, toxic, or explosive properties of nuclear material. Nuclear material shall include source material, special nuclear material or by-product material as those are defined in the Atomic Energy Act (42 U.S.C. 2014). Nuclear incident shall have the meaning given that term in the Atomic Energy Act (42 U.S.C. 2014(q)).

(END OF CLAUSE)

§ 1316.10 Officials not to benefit.

When so indicated in TVA contract documents or actions, the following clause is included by reference in such documents or actions:

Officials Not To Benefit

No member of or delegate to Congress or Resident Commissioner, or any officer, employee, special Government employee, or agent of TVA shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom unless it be made with a corporation for its general benefit; nor shall Contractor offer or give, directly or indirectly, to any officer, employee, special Government employee, or agent of TVA, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, except as provided in 5 CFR part 2635. Breach of this clause shall constitute a material breach of this contract, and TVA shall have the right to exercise all remedies provided in this contract or at law.

(END OF CLAUSE)